IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 57 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

and

Hon'ble MR.JUSTICE K.A.PUJ

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME-TAX

Versus

SARABHAI CHEMICAL PVT.LTD.

Appearance:

MR BB NAIK for appellant.

SERVED BY RPAD - (N) for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI

and

MR.JUSTICE K.A.PUJ

Date of decision: 14/02/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE K.A.PUJ)

At the instance of the Revenue, following

question of law is referred by the Income Tax Appellate Tribunal for our opinion for assessment years 1981-82 and 1982-83 :

> "Whether on the facts and in the circumstances of the case, the deletion of Rs. 4,726 and Rs. 3,544 being interest on deferred sale consideration was justified ?"

2. While framing assessment order for assessment year 1981-82, the Income Tax Officer has brought to tax an amount of Rs. 4,726/= being the interest on deferred sale consideration charged at the rate of 11% p.a. The Income Tax Officer has observed in his assessment order that there was a clear distinction between the facts as prevalent in assessment years 1970-80 and 1980-81 and in the present assessment year, i.e. 1981-82 insofar as even as per the modified agreement interest was payable with effect from 1-7-1979. The Income Tax Officer has also observed that interest was chargeable for the reasons mentioned in the assessment orders for assessment years 1979-80 and 1980-81 and further interest was also taxable even on the basis of contractual obligation. The Income Tax Officer has also adopted the same reasoning for charging interest of Rs. 3,546/= on unpaid purchase price even for assessment year 1982-83.

3. Being aggrieved by this order, the assessee had preferred two separate appeals for assessment year 1981-82 and 1982-83 before the C.I.T. (Appeals), Baroda, who confirmed the said addition in both the years while relying upon his orders for earlier years, i.e. assessment year 1979-80 and 1980-81 in the assessee's own case.

4. Being aggrieved and dissatisfied with the said orders, the assessee had preferred second appeals before the Income Tax Appellate Tribunal in respect of both the years. While allowing the appeal of the assessee on this point, the Tribunal has held as under :

> 3. The first point in the appeal preferred by the assessee pertains to the addition of Rs.l 4,726/- being interest on deferred sale consideration. At the outset, the learned counsel for the assessee placed before us a copy of the order of the Tribunal in the assessee's own case for the A.Ys. 1979-80 & 1980-81 (ITA Nos. 1137 & 1138/Ahd/84 dt. 15.2.1985) and pointed out that the decision of the Tribunal on

a similar point which came up for its consideration for those years was in favour of the assessee. He, therefore, urged that Rs. 4,726/- should be deleted from the total income of the assessee. In this connection, he also pointed out that Commissioner (Appeals) relied on his appellate orders for the immediately preceding two years. The learned representative for the department on the other hand, relied on the orders of the I.T. authorities.

4. We have considered the rival submissions of the parties as well as perused the aforesaid order of the Tribunal, to which one of us was a party. Following our said order, we would delete Rs. 4,726/- from the total income of the assessee."

Similarly, while allowing the appeal of the assessee for assessment year 1982-83, the Tribunal has observed as under:

"8. The next point pertains to the deletion of the addition of interest of Rs. 3,544/- on deferred sales consideration. This issue too had come up for our consideration for the assessment year 1981-82 in the appeal preferred by the assessee. Following our order in the assessee's own case for the A.Ys. 1979-80 and 1981-82 (ITA Nos. 1137 & 1138/Ahd/84 dated 15-2-1985), we had deleted the addition confirmed by the Commissioner (Appeals) in respect of the assessment year 1981-82. Since in the instant case, following our order dated 15-2-1985, the Commissioner (Appeals) has deleted Rs. 3,544/-, we have no hesitation in upholding the same."

5. It is rather strange and shocking to observe that while disposing of the appeals for the assessment years 1981-82 and 1982-83, the Tribunal has merely relied on the order passed in the case of the assessee for assessment years 1979-80 and 1980-81. The interest income was deleted by the Tribunal for assessment year 1980-81 only on the ground that as per the revised agreement dated 30-6-1978 the interest on unpaid purchase price was to accrue on and with effect from "1-7-1979" instead of "1-7-1978". Even as per this revised agreement, the interest is chargeable on accrued basis after 1-7-1979 and the I.T.O. has rightly observed in his assessment order for 1981-82. This material aspect

of the above ratio was totally lost sight of by the Tribunal while allowing the appeals of the assessee for assessment years 1981-82 and 1982-83. The Tribunal has, therefore, grievously erred in deleting the interest charged by the ITO on accrual basis even as per the modified agreement for assessment years 1981-82 and 1982-83. We are, therefore, of the opinion that the Tribunal has committed an error in deleting the interest of Rs. 4,726/= and Rs. 3,544/= being interest on deferred sale consideration and that the Tribunal was not justified in deleting the same.

6. We, therefore, answer this question in negative, i.e., in favour of the Revenue and against the assessee.

7. The Reference is accordingly disposed of with no order as to costs.

[R.K. Abichandani, J.]

rmr. [K.A. Puj, J.]